

Decision 03-05-081

May 22, 2003

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Santa Clara Valley  
Transportation Authority for an Order  
Authorizing Construction of an At-  
Grade Crossing of Hamilton Avenue By  
the Light Rail Transit Line of the  
Vasona Light Rail Project in the City of  
Campbell, County of Santa Clara.

Application 01-01-003  
(Filed January 5, 2001)

**ORDER DENYING REHEARING OF DECISION 02-12-053**

On January 21, 2003, Santa Clara Valley Transportation Authority (“VTA”) filed an application for rehearing of Decision (D.) 02-12-053. We have carefully considered all the arguments presented by VTA and are of the opinion that good cause for rehearing has not been shown. Therefore, we deny VTA’s application for rehearing.

**I. INTRODUCTION**

D.02-12-053 (“Decision”) resolves VTA’s motion to dismiss its application for approval of a light rail crossing on the basis that the Commission lacks jurisdiction to approve the construction and placement of public transit agency light rail (“LRT”) crossings. As the Decision concludes, the Commission has jurisdiction, stemming from a number of statutory sources, to require VTA to apply for approval of its proposed crossings. Moreover, the Decision notes that General Order (GO) 143-B requires VTA to file its application.

On January 21, 2003, VTA filed an application for rehearing alleging the following legal error: (1) the Commission’s exercise of jurisdiction

pursuant to sections 1201 and 1202<sup>1</sup> over the proposed location and construction of its LRT's grade crossing violates section 8 of article 12 of the California Constitution; (2) the Commission's authority to regulate grade crossings is constitutionally limited to private investor owned utilities, not public agencies, and that, in the absence of an express grant of statutory authority, the Commission has no authority to regulate VTA regarding grade crossings; (3) VTA does not fall under the definition of a street railroad as that term is issued in sections 1201 and 1202; (4) the Commission's exercise of jurisdiction over grade crossings pursuant to sections 1201 and 1202 violates sections 100071, 100161, and 100164 regulating transit districts. The Commission's Consumer Protection and Safety Division filed a response to VTA's application.

## **II. DISCUSSION**

### **A. Statutory Authority Over LRT Crossing Placement and Construction**

VTA argues that our safety jurisdiction over publicly owned light rail systems is limited, and that the Commission does not have the statutory authority to require VTA to apply to the Commission for approval of the placement and construction over VTA's grade crossings. According to VTA, because the Commission lacks statutory jurisdiction over the placement and construction of LRT crossings our efforts to regulate these crossing by requiring VTA to file an application for approval violate article XII, section 8 of the Constitution.<sup>2</sup> VTA's understanding of our regulatory jurisdiction is not correct.

As we explained in the Decision, our statutory jurisdiction over VTA's proposed grade crossing stems from a number of sources, and allows us to

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<sup>1</sup> Unless otherwise specified, all section references are to the Public Utilities Code.

<sup>2</sup> Article XII, section 8 provides in relevant part, "A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission."

require VTA to apply for approval before constructing light-rail crossings.<sup>3</sup> Sections 99152 and 309.5 provide the Commission with extensive authority over the safety of public transit guideways. As discussed below, the Commission has long established that our statutory authority pursuant to these sections extends to approval of light rail crossings. The Commission also has authority to regulate LRT grade crossings pursuant to sections 1201 and 1202, which provide the Commission with exclusive jurisdiction over rail crossings.

It bears emphasis that the Commission has adequate authority to review VTA's crossings pursuant to either section 99152, concerning safety of public transit guideways, or sections 1201 and 1202, concerning crossings, to require VTA to file at the Commission for approval of its LRT crossings. Although we have jurisdiction over the crossings pursuant to both statutory schemes, our section 99152 authority is sufficient, in and of itself, to support the Decision's conclusion that VTA must apply to the Commission for approval of its crossings.

### **1. Section 99152**

VTA contends that the Decision misconstrues section 99152, which does not allow the Commission to require approval of the placement and construction of LRT guideways. VTA fails to support its restrictive interpretation of section 99152. In any event, the Commission's conclusions regarding the scope of its authority pursuant to section 99152 became final in 1991, and are not now subject to attack.

Section 99152 provides:

Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulation of the Public Utilities Commission relating to safety appliances and procedures.

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<sup>3</sup> The sources of the Commission's statutory authority over light rail crossings include sections 231, 309.7, 778, 1201, 1202, 99152, and 100168. These sections are discussed in greater detail in the Decision.

The commission shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public.

The commission shall develop an oversight program employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways. Existing industry standards should be used where applicable.

As the Decision states, we have consistently interpreted our authority pursuant to section 99152 broadly. We have explained that our guideway safety jurisdiction requires us to exercise oversight over the entire public transit guideway system. (See Decision, at p. 16; *Brown v. Santa Clara County Transportation Agency* (1994) 56 Cal.P.U.C.2d 554, 559.)

Moreover, VTA fails to realize that any issue regarding whether section 99152 provides us with the authority to require Commission approval of LRT crossings was definitively resolved in 1991 and cannot be raised in this proceeding. After the Legislature revised section 99152 in 1996 to require the Commission to develop an oversight program for light rail transit guideways, the Commission undertook to revise its light rail safety regulations to be consistent with the section 99152 mandates. (*General Order 143-A* (1991) 40 Cal.P.U.C.2d 20, 1991 Cal. PUC LEXIS 240.) The proceeding was a cooperative process with the affected transit districts, including VTA<sup>4</sup>, who was a party to the proceeding. (*Id.*, at \*3-\*4.) The Commission concluded it should adopt GO 143-A, including section 1.02, providing that the GO provisions are authorized by section 99152, among other Code sections. (*Id.*, at \*6, \*29.) The GO also included section 9.08, which provides:

No crossings or intersections of tracks of an LRT system and a public road, highway, street, track of railroad corporation either at-grade or at separated

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<sup>4</sup> VTA was then known as Santa Clara County Transit Agency, but is the same entity.

grade shall be constructed without having first filed an application ... and secured the permission of the Commission.<sup>5</sup>

By adopting the requirement that LRT crossings obtain Commission approval in 1991, and citing section 99152 as authority, the Commission concluded that it had statutory authorization to require applications from transit agencies seeking to construct crossings. It is well established that “[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.” (§ 1709; *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 630.) No transit agency challenged these conclusions when that decision was issued, and VTA cannot challenge our jurisdiction to require crossing applications now.

Although VTA concedes that the Commission has safety oversight over LRT systems, it contends that the Commission cannot “control all aspects of a LRT project, including its original design and placement in a given community.” (App. Rhg., at 29, 30.) Despite VTA’s protestations, the Commission is asserting safety jurisdiction, and is not attempting to exercise “full regulatory control” over VTA’s crossing. In the Commission’s view, as evidenced by GO 143-B, section 9.08, and Commission decisions, safety encompasses the placement and construction of crossings. (See *Brown*, 56 Cal.P.U.C.2d, at 559.) VTA provides no support or authority for its limited notion of what constitutes a safety concern, or why placement and construction of grade-separated crossings does not fall within those concerns. As the agency charged with implementing the statutes concerning public transit guideway safety, it is the Commission that must decide how to most effectively carry out its mandate. (See § 99152.) VTA has failed to demonstrate any manner in which its interpretation is more plausible, or in any manner preferable to our established understanding of our safety authority.

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<sup>5</sup> GO 143-A was subsequently revised in respects not relevant to VTA’s challenge, and is now GO 143-B. Section 9.08 has remained the same.

Furthermore, all the Commission has done in this case is require that VTA file an application prior to constructing its crossing. Any concerns VTA may have about the scope of the Commission's actions once the application is filed are premature at best. As we have stated, the Commission's authority pursuant to 99152 to require that VTA file an application has already been conclusively established.

## **2. Sections 1201 and 1202**

Most of VTA's application for rehearing challenges our conclusion that sections 1201 and 1202 apply to VTA's light rail crossings. Again, we emphasize that even without our section 1201 and 1202 rail crossing authority we would have sufficient safety jurisdiction to require VTA to file its crossing application. That being said, the Commission also independently has authority over light rail crossings pursuant to sections 1201 and 1202. As we explained in the Decision, our section 1201 and 1202 authority over public or municipal street railroads is supported by the relevant statutory language, case law, and longstanding Commission precedent.

Section 1201 provides, in relevant part, that no at grade crossings of street railroad corporations shall be constructed without the approval of the Commission. Section 1202 further states that the Commission has the "exclusive power" to:

...determine and prescribe the manner, including the particular point of crossing, and terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or of a railroad by a street.

VTA argues that it cannot be considered a street railroad under these sections. Although VTA does not deny that its system meets the description of a street railroad as it is defined in section 231, VTA contends that it cannot be a street

railroad since it is owned by a public agency, and section 1202 street railroads must be privately owned. VTA's argument is not correct.

The California Supreme Court definitively answered the question of whether publicly owned transportation companies are common carriers subject to Commission regulation in *Los Angeles Metropolitan Transit Authority v. Public Utilities Comm. (MTA II)* (1963) 59 Cal.2d 863. In *MTA II* the Court considered whether the Legislature could grant the Commission jurisdiction over publicly owned passenger stage corporations. (Id., at 868.) Both passenger stage corporations and street railroads are considered types of common carriers, or transportation utilities, pursuant to section 211.<sup>6</sup> The Court analyzed the language in article XII of the Constitution and concluded that the private ownership requirement for other utilities did not apply to common carriers. (Id.) As the Court explained, "[t]he fact that petitioner is publicly owned, as opposed to privately owned, does not take it out of the general category of 'common carrier'." [Citations]." (Id., at 869.)

*MTA II* confirms that publicly owned street railroads are within the Commission's jurisdiction. As in *MTA II*, even though VTA's street railroad is publicly owned, it is still a common carrier pursuant to section 211, and therefore subject to the Commission regulation. *MTA II* also establishes that transportation utilities are a separate category of utilities, for which private ownership is not a prerequisite to Commission regulation. Therefore, VTA's contention that transportation utilities are no different from other utilities in regard to whether private ownership is required (VTA App. Rhg., at 18) is simply not correct. For this reason, the non-transportation utility cases cited by VTA in support of its position are inapposite to the case at hand.

In challenging our section 1201 and 1202 authority, VTA also refers to the difference between legitimate safety jurisdiction, and "full regulatory

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<sup>6</sup> In relevant part section 211 provides: 'Common carrier' includes: (a) Every railroad corporation, street railroad corporation;...; (c) every passenger stage corporation...

control of street crossings by a street railroad corporation,” which it claims is beyond the scope of the Commission’s authority over VTA’s system. (App. Rhg., at p. 22.) VTA fails to understand that the Commission’s section 1201 and 1202 rail crossing authority is a type of safety jurisdiction. As the California Supreme Court has recognized, rail crossings are a *safety* concern, and one that is significant enough to require exclusive statewide regulation vested in the Commission. (*City of San Mateo v. Railroad Commission* (1937) 9 Cal.2d 1, 10.) As discussed in the previous section, although the Commission’s view of its safety jurisdiction is broader than VTA’s, at no time has the Commission attempted to exercise full jurisdiction over VTA’s system as VTA implies. Such full regulatory control would involve issues such as service and fares. The Commission’s only interest is in issues relating to safety.

Furthermore, as we noted in the Decision, we have consistently exercised authority pursuant to sections 1201 and 1202 over publicly owned light rail crossings. (Decision, at p. 24.) VTA has provided no persuasive basis for us to depart from this established precedent.

### **3. Conclusion**

In light of the foregoing, the Commission has sufficient statutory authority to require VTA to apply for approval prior to constructing its light rail crossing. Because this statutory authority exists, there is no violation of article XII, section 8 of the Constitution.

### **B. Sections 100071 (a), 100161 (a), and 100164**

VTA also argues that the Commission’s exercise of its jurisdiction over VTA’s proposed grade crossings pursuant to sections 1201 and 1202 violates sections 100071(a), 100161 (a), and 100164, which are statutes regulating VTA.



(App.Rhg, p. 24.)<sup>7</sup> Specifically, VTA alleges that under express provisions of the Public Utilities Code, VTA has paramount responsibility for the location and construction of all its LRT-street crossings, while the Commission has “interlocking but limited jurisdiction” over safety in the design, construction, and operation of LRT systems. (Id. at 25.) VTA contends that we have made no effort to harmonize the Commission’s and VTA’s regulatory jurisdiction.

None of the above-mentioned statutory provisions relied upon by VTA confer exclusive jurisdiction to VTA over the location and construction of its LRT crossings. Nor do any of the statutory provisions relied upon by applicant result in a direct conflict with the Commission’s jurisdiction over light rail safety grade crossings. The fact is there are no statutory provisions that support VTA’s contention that it has “paramount responsibility for the location and construction of all of its LRT street crossings. . . .” (Id.) Applicant’s assertion that VTA’s enabling legislation, as contained in subdivision (a) of section 100161, expressly provides VTA with the same authority to locate and construct LRT street crossings misstates the law. There is no mention of “crossings” in VTA’s enabling legislation. Such legislation simply provides that VTA has the authority to locate and construct its rail transit facilities, which one may surmise would include the proposed location and construction of a grade crossing for its rail transit system, but nowhere does such legislation state that in so doing VTA is not subject to the Commission’s statutory jurisdiction regarding the proposed LRT grade crossing.

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<sup>7</sup> Section 100071 provides, in pertinent part: It shall be the duty of the board of supervisors and it shall have the power to: (a) Determine the transit facilities to be acquired and constructed by the district, the manner of operation, and the means to finance them.

Section 100161 (a) provides, in pertinent part: The district may acquire, construct, own, operate, control, or use rights-of-way, rail lines, buslines, . . . and any and all facilities necessary or convenient for transit service within or partly without the district, underground, upon, or above the ground and under, upon, or over public streets or other public ways or waterways, together with all physical structures . . . which are necessary or convenient for the access of persons or vehicles thereto.

Section 100164 provides: The district may construct and operate or acquire and operate transit works and facilities in, under, upon, over, across, or along any state or public highway or any stream, bay or water course, or over any of the lands which are the property of the state, to the same extent that such rights and privileges appertaining thereto are granted to municipalities within the state.

Therefore, we find that the Commission's exercise of its jurisdiction to approve VTA's proposed grade crossings does not conflict in any way with the statutes regulating VTA. As such, the statutory schemes, as we have interpreted them, are in harmony.

### **III. CONCLUSION**

Based on the above discussion, we find that no legal error has been established and the application for rehearing of D. 02-12-053 is denied. No further discussion of VTA's allegations is warranted.

**THEREFORE, IT IS ORDERED that:**

Rehearing of D. 02-12-053 is hereby denied.

This order is effective today.

Dated May 22, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners